

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 4th Street, N.W., Suite 540-S
Washington, D.C. 20001-2714

NILE EXPRESS TRANSPORT, INC.
Appellant,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Appellee

Case No. BA-C-06-80023

FINAL ORDER ON MOTIONS FOR SUMMARY JUDGMENT

On September 21, 2006, the District of Columbia Department of Health Medical Assistance Administration (MAA) notified Appellant, Nile Express Transport, Inc., that the MAA was suspending Nile's provider agreement while MAA investigated an accident involving one of Nile's vehicles. Nile appealed this suspension and moved for summary judgment to dismiss the suspension and "to compensate Nile for damages sustained as a result of the Suspension," among other relief requested. After this appeal was filed the MAA withdrew its suspension and cross-moved for summary judgment to dismiss Nile's claim for damages. For reasons set forth below, I deny Nile's motion to dismiss the suspension, as moot, and I deny Nile's motion for damages and other relief. I grant the Government's motion to dismiss Nile's damages claims.

I. Background

Nile Express Transport provides transportation services for persons enrolled in the District's Medicaid program under the terms of a provider agreement between Nile and the District. Provider agreements are subject to regulation under the District's Medicaid Program Administrative Procedures, 29 DCMR 1300 et seq.

On July 21, 2006, a child who had been transported in a Nile van was killed after she exited the van and started crossing the street into oncoming traffic. Nile notified MAA of the incident on July 24. Nearly two months later, on September 21, 2006, the MAA issued a "Notice of Suspension of Provider Agreement," stating that MAA was investigating the accident and "the suspension shall remain in effect until the investigation by MAA has been completed."

Nile appealed the suspension to the Office of Administrative Hearings (OAH) on September 28, 2006, and requested a hearing. At a prehearing conference on October 27, 2006, the attorney for the Government announced that MAA was going to withdraw the suspension, reserving its rights to institute termination proceedings.¹ The withdrawal was confirmed in a letter from MAA to Nile dated October 27, 2006, and stated to be "effective October 27, 2006."

On November 8, 2006, Nile filed a Motion for Summary Judgment. The motion sought "a determination that the suspension was illegal, it deprived Appellant of due process and that Appellant should be placed in the same position that it was at the time of the suspension." (Appellant's Mot. at 3.) Nile asserted that "Appellee's withdrawal must then include restoring Appellant to the volume of clients it had at the time of the unlawful suspension

¹ The MAA subsequently proposed to terminate Nile's provider agreement. Nile filed an appeal from the proposed termination.

and at some point, making Appellant whole by reimbursing the income lost from September 21, 2006, to date.” (Appellant’s Mot. at 3.) A Statement of Material Facts accompanying the motion asserted that Nile received \$24,173 per month for transporting “standing Medicaid clients” prior to the suspension. (Appellant’s Mot. at 4.)

On December 8, 2006, the Government filed its opposition to the Motion for Summary Judgment. The Government’s motion papers attached a letter of October 27, 2006, withdrawing its suspension of Nile, Appellee’s Opp’n., Ex. A, and a letter from Nile acknowledging that it accepted a client for transport on October 27, 2006, Appellee’s Opp’n., Ex. B). The Government’s letter stated that it was “reinstating Nile Express into MAA’s automated provider rotation system,” although the Government denied that it had made any agreement to reinstate Nile to the volume of work that it enjoyed at the time of the suspension. Appellee’s Opp’n. At 3.

The parties appeared for oral argument on Nile’s Motion for Summary Judgment on December 13, 2006. The Government’s attorney conceded that the Government did not have authority to issue a suspension in these circumstances. The Government offered to work with Nile to restore the company to its previous volume of business. But the Government maintained that this administrative court had no authority to award damages for Nile’s loss of business as a result of the suspension. Nile’s representative disagreed.

To resolve this dispute, I issued a scheduling order on December 15, 2006, providing for the Government to file a Motion for Summary Judgment to dismiss Nile’s damages claim. The Government filed its motion on January 18, 2007, and Nile filed its response on February 12. Both of the parties’ motions for summary judgment are now ripe for resolution.

II. Findings of Fact

1. At all times material to the parties' respective motions for summary judgment Nile Express Transport, Inc. and the District of Columbia were parties to a provider agreement under which Nile contracted to provide transportation services to Medicaid recipients in the District of Columbia. (Undisputed.)

2. Following an accident involving a person that Nile had transported, the District of Columbia Department of Health Medical Assistance Administration informed Nile by letter dated September 21, 2006, that the provider agreement between MAA and Nile was being suspended. (Letter of Sep. 21, 2006, attached to Nile's Notice of Appeal; Appellee's Statement of Facts No. 1, filed Dec. 8, 2006.)

3. By letter dated October 27, 2006, the MAA advised Nile that it was withdrawing the suspension effective that date. (Ex. A to Appellee's Opp'n to Mot. for Summ. J. filed Dec. 8, 2006.)

4. Following the withdrawal of the suspension, the MAA again started to use Nile to transport Medicaid recipients, although the MAA did not restore Nile immediately to the volume of service that Nile conducted prior to the suspension. (Ex. B to Appellee's Opp'n to Mot. for Summ. J. filed Dec. 8, 2006.)

5. At oral argument on December 13, 2007, the attorney for the Government conceded that "the suspension was wrong."

6. In its Motion for Summary Judgment Nile asserted that it had lost revenues of over \$24,000 per month as a consequence of the suspension. (Appellant's Mot. at 5 & Ex. C). At oral

argument, Nile's representative asserted that, as of December 13, 2007, Nile had not been restored to the volume of service that it enjoyed before the suspension.

III. Conclusions of Law

OAH Rule 2828 states "motions for summary adjudication or comparable relief may be filed in accordance with Rule 2812." OAH Rule 2812 sets forth the procedures for filing motions, but does not speak specifically to motions for summary judgment. Under OAH Rule 2801.2, "Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority."

The summary judgment standard set forth in the Super Ct. Civ. R. 56(c) provides:

The judgment sought shall be rendered forthwith if the pleadings, depositions answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The District of Columbia Court of Appeals described the substantive standard for entry of summary judgment in *Behradrezaee v. Dashtara*, 910 A.2d 349, 364 (D.C. 2006):

Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. GLM P'ship v. Hartford Cas. Insu. Co., 753 A.2d 995, 997-998 (D.C. 2000) (citing Colbert v. Georgetown Univ., 641 A.2d 469, 472 (D.C. 1994) (en banc)). 'A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the nonmoving party, (3) under the appropriate burden of proof.' Kendrick v. Fox Television, 659 A.2d 814, 818 (D.C. 1995) (quoting Nader v. de Toledano, 408 A.2d 31, 42 (D.C. 1979)).

Although the moving party has the burden of demonstrating the absence of a genuine issue of material fact, “Once the movant has made such a prima facie showing, the nonmoving party has the burden of producing evidence that shows there is ‘sufficient evidence supporting the claimed factual dispute . . . to require a jury or judge to resolve the parties’ differing versions of the truth at trial.’” *Kendrick v. Fox Television*, 659 A.2d 814, 818 (D.C. 1995) (quoting *Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979)).

Nile’s Motion for Summary Judgment seeks an adjudication that (1) “the suspension was illegal;” (2) “it deprived Appellant of due process;” and (3) “Appellant should be placed in the same position that it was at the time of the suspension.” Appellant’s Mot. at 4. The Government’s Motion for Summary Judgment seeks a ruling that “OAH does not have the legal authority to impose damages.” Appellee’s Mot. at 2.

Although the Government conceded that MAA suspended Nile in error, and the concession follows logically from the regulations that govern the administration of the District of Columbia Medicare Program,² the issue no longer presents a case in controversy and therefore Nile’s motion must be denied as moot. “A case is moot if the parties have presented no justiciable controversy to the appellate court. ‘Although not bound strictly by the ‘case or controversy’ requirements of Article III of the U.S. Constitution, this court does not normally decide moot cases.’” *Thorn v. Walker*, 912 A.2d 1192, 1195 (D.C. 2006) (quoting *Cropp v. Williams*, 841 A.2d 328, 330 (D.C. 2004)). Moreover, as the Court of Appeals noted in *Thorn*,

² The provisions governing the administration of the District Medicare Program are set forth in Title 29, Chapter 13 of the District of Columbia Municipal Regulations. The regulations allow the Government to terminate a provider who “Did not comply substantially with the provisions of . . . the provider agreement and pertinent District laws and regulations.” 29 DCMR 1302.1(c). But suspension is only provided “for conviction of a program related offense.” 29 DCMR 1304. There is no provision for suspension of a provider for breaching the provider agreement or violating regulations that did not involve a conviction for a program related offense.

“In deciding whether a case is moot, we determine whether this [c]ourt can fashion effective relief.” *Id* (quoting *Graveyard Ranch, Inc. v. Bell*, 116 P.3d 779, 781 (Mont. 2005)).

Because the Government agrees that its suspension of Nile was illegal, the dispute concerning that issue does not require resolution by this administrative court. Nor is there any relief that this court can fashion except to re-state what the Government has already conceded. The issue is therefore moot and Nile’s motion seeking a ruling that the suspension is illegal is denied as moot.

Nile also seeks a ruling that the Government’s suspension of the provider agreement deprived Nile of due process. Nile cites no authority in support of this proposition and provides no argument aside from its naked assertion. The essence of due process under the Fourteenth Amendment is that the Government cannot take property or deprive a citizen of liberty without giving the citizen “notice and opportunity for hearing appropriate to the nature of the case.” *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 1712 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)).

Here the record clearly establishes that Nile was given notice and an opportunity for a hearing appropriate to the nature of the case. The Government’s September 21, 2006, letter informing Nile of its suspension stated that Nile had a right to appeal the suspension within 15 days to the Office of Administrative Hearings, a right that Nile exercised. Nile then was afforded an opportunity for a hearing and for argument on its Motion for Summary Judgment. Nile was accorded due process and its Motion for Summary Judgment is denied to extent that it seeks a ruling to the contrary.

The third request in Nile's Motion for Summary Judgment is that it "be placed in the same position that it was at the time of the suspension." Nile's representative explained at oral argument that it seeks compensation for the revenue it claims to have lost as a consequence of the Government's improper suspension of the provider agreement. The Government has cross-moved for summary judgment on this issue, arguing that "OAH does not possess the requisite legal authority to impose damages." Appellee's Mot. at 1. In response to the Government's motion, Nile decries the motion as "a typical example of their ridiculous and wanton delay tactics." Appellant's Opp'n at 1. But Nile does not cite any authority in opposition to the Government's motion or in support of its claim for consequential damages.

Like all administrative tribunals, the jurisdiction of the Office of Administrative Hearings is limited by its enabling statute. *See Boyer v. OTR*, 2006 D.C. Off. Adj. Hear. LEXIS 107 at *4 ("OAH has limited jurisdiction that is conferred by statute, D.C. Official Code § 2-1831.03, or if statutorily authorized, by delegation"). The Court of Appeals has been especially wary of discerning an implied power for administrative bodies to award damages that are not expressly allowed by statute. *See Mendota Apartments v. District of Columbia Comm'n on Human Rights*, 315 A.2d 832, 836 (D.C. 1974) (holding that the delegation of "the extraordinary and unusual power to award damages" requires "express words, specifying the basis on which damages could be awarded and some limitation on the amount that could be allowed").

The OAH governing statute, D.C. Official Code § 2-1831.01 et seq. does not give the agency the power to award damages. The powers and duties delegated to the OAH judges include the authority to "[i]mpose monetary sanctions for failure to comply with a lawful order," D.C. Official Code § 2-1831.09(b)(8), and to "[s]uspend, revoke, or deny a license or permit,"

D.C. Official Code § 2-1831.09(b)(9). The governing statute does not give OAH the authority to award damages either expressly or by implication.

The regulations governing appeals from adverse rulings by the District of Columbia Department of Health in administration of the Medicaid program also confer no authority on OAH to award damages. The regulations govern the “[e]xclusion, termination and/or suspension of a provider from the program,” and “[p]rocedures to appeal actions taken under this subsection.” 29 DCMR 1300.1(a), (f). The regulations provide that appeals from a notice of proposed exclusion or termination may be taken to the Board of Appeals and Review, 29 DCMR 1303.5, jurisdiction that has now been transferred to OAH, D.C. Official Code § 2-1831.03(a)(3). Nowhere do the regulations governing the Medicaid Program Administrative Procedures grant OAH or its predecessor authority to award any kind of damages as a consequence of the Department of Health’s improper suspension or termination of a provider agreement.

This administrative court does not have the authority to compensate Nile for any damages it has suffered or to impose any kind of monetary sanction on the Government. Accordingly, Nile’s Motion for Summary Judgment is denied to the extent that it seeks to “be placed in the same position that it was at the time of the suspension.”

It follows that the Government’s Motion for Summary Judgment seeking an order that “OAH does not possess the requisite legal authority to impose damages” must be granted. That authority is not conferred by any statute or delegated through any valid regulation. Assuming, as I must, that Nile can prove that it sustained economic loss and other damages as a consequence of the Government’s improper suspension, those damages are not material to the issue that this administrative court has jurisdiction to consider — whether Nile’s suspension was appropriate.

Therefore I grant the Government Motion for Summary Judgment and hold that this administrative court does not have authority to award damages.

IV. Order

Accordingly, it is this 27th day of **April, 2007**

ORDERED that Appellant;s Motion for Summary Judgment is **DENIED AS MOOT** to the extent that Appellant seeks an order that the suspension of Appellant's Medicaid Provider Agreement was illegal; and it is further

ORDERED that Appellant's Motion for Summary Judgment is **DENIED** to the extent that is seeks and order that Appellant was deprived of due process; and it is further

ORDERED that Appellant's Motion for Summary Judgment is **DENIED** to the extent that it seeks an order awarding Appellant damages or seeking to place Appellant in the same position that it was at the time of the suspension; and it is further

ORDERED that Appellee's Motion for Summary Judgment seeking an order that the Office of Administrative Hearings does not have legal authority to impose damages is **GRANTED**; and it is further

ORDERED that there being no further issues in dispute, this case shall be closed following the expiration of the time allowed for filing of a Motion for Reconsideration; and it is further

ORDERED that, pursuant to OAH Rule 2832, either party may file a motion for reconsideration within ten days of service of this Order; and it is further

ORDERED that the appeal rights of any party aggrieved by this Final Order are set forth below.

April 27, 2007

/s/

Nicholas H. Cobbs
Administrative Law Judge